

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|                                |   |                      |
|--------------------------------|---|----------------------|
| In the Matter of               | ) |                      |
|                                | ) |                      |
| Verizon Petition for Emergency | ) | WC Docket No. 02-202 |
| Declaratory and Other Relief   | ) |                      |
| _____                          | ) |                      |

**REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA), through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC) Wireline Competition Bureau (WCB),<sup>1</sup> hereby submits its reply comments on the Petition for Emergency Declaratory and Other Relief of Verizon (Petition). USTA filed comments pursuant to the *Public Notice* on August 15, 2002.

After reviewing the comments filed herein, USTA continues to give its full support for the Petition. USTA is concerned, though, by the suggestion of some parties that the FCC ought to commence a rulemaking proceeding in order to address the principles presented in the Petition. A rulemaking proceeding would serve only to delay sorely needed action by the FCC that should occur immediately. Rather than delay action on the Petition by commencing a rulemaking proceeding, the FCC should act on the Petition expeditiously based upon the record developed here. Each day of delay is another day of accrued debt that a supplier-carrier may be unable to recover as a pre-petition debt in a bankruptcy proceeding commenced by one of its carrier customers. No one knows how many additional carrier bankruptcies will occur before the

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<sup>1</sup> *Public Notice*, WC Docket No. 02-202, DA 02-1859 (rel. July 31, 2002) soliciting comment on Verizon's Petition for Emergency Declaratory Ruling and Other Relief.

FCC can complete a rulemaking. Supplier-carriers should not be compelled to wait months, or perhaps more than a year, before the FCC acts on the principles presented in the Petition. The crisis in which the telecommunications industry finds itself demands decisive action by those government officials charged with overseeing it.

## **DISCUSSION**

Although USTA disagrees with the New York State Department of Public Service (NYSDPS) that the FCC should issue a Notice of Proposed Rulemaking in order to consider the relief requested in the Petition,<sup>2</sup> USTA agrees with the NYSDPS that “Verizon’s Petition raises valid issues.”<sup>3</sup> The CLEC and IXC filings largely attempt to dismiss the Petition and indulge in RBOC bashing. While USTA disagrees with a number of points presented by Time Warner Telecom, USTA concurs with Time Warner Telecom that “carriers should not be forced to provide service to debtors without compensation.”<sup>4</sup> USTA also agrees that this principle should not be limited to ILECs but should be applicable to all supplier-carriers.

With that stated, though, it must also be acknowledged that it is ILECs who are obligated as carriers of last resort to serve all customers that desire telecommunications service. Unlike other carriers that can be selective in choosing the markets that they wish to service, ILECs must be ready, willing and able to serve all customers in their service area on demand. Further, ILECs are the most heavily regulated carriers providing telecommunications services. As such, their ability to act is constrained by a level of regulatory review to which no other carriers must submit. It is difficult to see how ALTS, for example, can suggest that its members do not have

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<sup>2</sup> Comments of the New York State Department of Public Service, filed August 15, 2002, at 1 and 2-3.

<sup>3</sup> *Id.* at 4.

far greater flexibility in structuring service agreements with their carrier customers.<sup>5</sup> These constraints compel ILECs such as Verizon to come forward at this time and petition the FCC for expeditious relief so that they may respond to the economic crisis that confronts the telecommunications industry.

Further, and without conceding ILEC dominance in any particular market for telecommunications service, even dominant carriers must be accorded a fair opportunity to implement the same kinds of sound fiscal practices that nondominant carriers are free to implement. A dominant carrier's fiduciary responsibility to its shareholders and employees is no less than that of a nondominant carrier. Its obligation to its customers to provide high quality service is also no less than that of a nondominant carrier. Whatever label the FCC elects to place on ILECs, it must allow them the flexibility to engage in commercially reasonable and fiscally responsible conduct or risk precipitating a telecommunications industry implosion from which it could take years to recover. This is all that is asked for in the Petition.

USTA also agrees with Time Warner Telecom that "bankruptcy courts have looked to the Commission as the expert federal agency for input on the appropriate resolution of bankruptcy issues in the context of the telecommunications industry."<sup>6</sup> USTA also agrees that "[I]t is vitally important that the Commission use this influence to convey to the bankruptcy courts the critical need to continue payments to carriers for post-petition services."<sup>7</sup> Should the FCC decide to insert itself into bankruptcy court proceedings, it should explain "the interconnected and interdependent nature of the telecommunications industry," "emphasize the widespread and far-reaching effects of the current financial crisis," and "stress to the courts the need for adequate

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<sup>4</sup> Comments of Time Warner Telecom, filed August 15, 2002, at 13.

<sup>5</sup> Comments of ALTS at 2-3.

<sup>6</sup> Comments of Time Warner Telecom at 13.

<sup>7</sup> *Id.*

assurance at a level that truly ensures that carriers will be paid for post-petition services rendered.”<sup>8</sup>

Neither Verizon in its Petition nor USTA in its comments suggests that the FCC should attempt to preempt bankruptcy courts with respect to jurisdiction over executory contracts or the obligation to cure pre-petition indebtedness where a debtor’s executory contract is accepted or affirmed. The very compelling issue presented is whether the FCC will allow a carrier that purchases the assets of a debtor-carrier to circumvent the intent of the Bankruptcy Codes cure provisions by prohibiting a supplier-carrier from insisting that the purchasing carrier re-establish service, independent of its successor-in-interest position, when it rejects the debtor’s existing service arrangement with the supplier-carrier. To restrict the supplier-carrier from insisting on a new service arrangement when there has been a rejection in the bankruptcy of the debtor-carrier’s prior service arrangement with the supplier-carrier nullifies the cure requirement. The issue is one of coordination between bankruptcy law and communications law, not one of attempted preemption of bankruptcy law. In this context, an orderly transition of customers is not synonymous with a totally transparent process for customers that may include a temporary disruption in service. The purchasing carrier is clearly in a position to prevent any disruption to its newly acquired customers by curing the pre-petition debt.

USTA disagrees with Time Warner Telecom’s proposal that the FCC “require the ILEC to perform the role of coordinator in CLEC-to-CLEC mass migrations.”<sup>9</sup> This would allow for a total abdication of responsibility by the former service provider (debtor-CLEC) and the new service provider (acquiring-CLEC) with respect to customers with whom they have or will have a service relationship. In this instance, the ILEC has no service relationship with the end-user

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<sup>8</sup> *Id.* at 14.

<sup>9</sup> *Id.* at 18.

customers, and it should not be thrust into the role of coordinator for the customer migration.  
The FCC should not countenance such dereliction of responsibility to customers by CLECs.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

By: /s/ Lawrence E. Sarjeant

Lawrence E. Sarjeant

Indra Sehdev Chalk

Michael T. McMenamin

Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600

Washington, D.C. 20005

(202) 326-7300

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**CERTIFICATE OF SERVICE**

I, Meena Joshi, do certify that on August 22, 2002, Reply Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

/s/Meena Joshi  
Meena Joshi

AT&T  
1120 20th St., NW, Suite 1000  
Washington, DC 20036

Dickstein Shapiro Morin & Oshinsky, LLP  
Robert N. Felgar  
2101 L Street  
Washington, D.C., DC 20037 -1526

Verizon  
1300 I Street, NW  
Suite 400 West  
Washington, DC 20005

Swidler Berlin Shereff Friedman, LLP  
Kathleen Greenan  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Dickstein Shapiro Morin & Oshinsky LLP  
Robert Felgar  
2101 L Street  
Washington D.C., DC 20037 -1526

SBC Communications Inc.  
Christopher  
1401 Eye Street, NW  
Suite 400  
Washington, DC 20005

Kraskin, Lesse & Cosson  
Donald Elardo  
2120 L Street, N.W.  
Suite 520  
Washington, DC 20037

Lawler, Metzger & Milkman, LLC  
Regina M. Keeney  
2001 K Street NW, Suite 802  
Washington, DC 20006

Covad Communications  
Praveen Goyal  
600 14th St. NW  
Suite 750  
Washington, DC 20005

ALTS  
Teresa K Gaugler  
888 17th Street NW  
Suite 900  
Washington, DC 20006

Competitive Telecommunications Association  
Jonathan Lee Document Date:  
1900 M Street, N.W.  
Suite 800  
Washington, DC 20036 -3508

Wiley Rein & Fielding LLP  
Robert J. Butler  
1776 K Street, N.W.  
Washington, DC 20006

Willkie Farr & Gallagher  
Thomas Jones  
1155 21st St. NW, Suite 600  
Washington, DC 20036

Sidley Austin Brown & Wood LLP  
1501 K Street, NW  
Washington, DC 20005

New York State Department of Public Service  
Lawrence G. Malone  
3 Empire State Plaza  
Albany, NY 12223 -1350

Shaw Pittman LLP  
Glenn S. Richards  
2300 N Street, N.W.  
Washington, DC 20037 -1128

Fred Williamson & Associates, Inc.  
2921 East 91st Street  
Suite # 200  
Tulsa, OK 74137 -3355

Sprint Corporation  
Michael  
401 9th Street, NW, Suite 400  
Washington, DC 20004

Mpower Communications Corp.  
Marilyn H. Ash  
175 Sully's Trail, #300  
Pittsford, NY 14534

WorldCom  
1133 19th St NW  
Washington, DC 20036

National Exchange Carrier Association, Inc.  
80 South Jefferson Road  
Whippany, NJ 07981

Patton Boggs LLP  
Paul Besozzi  
2550 M Street, N.W.  
Washington, DC 20037

Wilmer, Cutler & Pickering  
John H.  
2445 M Street, N.W.  
Washington, DC 20037

BellSouth Telecommunications, Inc.  
Stephen L. Earnest  
675 West Peachtree Street NE  
Suite 4300  
Atlanta, GA 30375 -0001



Global Crossing North America, Inc.  
Michael J. Shortley, III  
1080 Pittsford-Victor Road  
Pittsford, NY 14534

National Telecommunications Cooperative Association  
L. Marie Guillory  
4121 Wilson Blvd., 10th Floor  
Arlington, VA 22203